

# EXHIBIT E

Diane Jones  
November 20, 2020

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## UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

- - - - - X

THERESA SWEET, et al., on :  
behalf of themselves and all :  
others similarly situated, :  
Plaintiffs, :  
vs. :  
ELISABETH DEVOS, in her :  
official capacity as :  
Secretary of the United :  
States Department of :  
Education, et al., :  
Defendants. :  
- - - - - X

Remote Videotaped Deposition Of DIANE AUER JONES

Friday, November 20, 2020

9:15 a.m. (EST)

Job No. 330599

Pages: 1 - 301

Reported by: Dana C. Ryan, RPR, CRR

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18 to 21

<p>1 witness, was that on behalf of the Center for 2 Excellence in Higher Education?</p> <p>3 A Yes.</p> <p>4 MS. O'GRADY: Okay. We're going to 5 mark as Exhibit 2 the declaration that you had no 6 specific -- that you used to prepare for this 7 deposition. And in the folder, that is going to 8 be ECF number 56-3, Jones Declaration. It is 9 about the eighth file down in the folder.</p> <p>10 THE WITNESS: This is the declaration?</p> <p>11 MS. O'GRADY: Yes, Jones declaration. (Jones Deposition Exhibit 2 was marked 12 for identification and attached to the transcript.)</p> <p>13 BY MS. O'GRADY:</p> <p>14 Q And do you have that open and ready?</p> <p>15 A I do.</p> <p>16 Q So, Ms. Jones, did you write this document?</p> <p>17 A Yes.</p> <p>18 Q Did you have anyone assist you in writing it?</p> <p>19 A Yes.</p> <p>20 Q And who helped you write it?</p> <p>21 A Office of General Counsel at the</p>	<p>Page 18</p> <p>1 are responsible for?</p> <p>2 A I'm responsible for overseeing the 3 Office of Postsecondary Education and that 4 includes both the regulatory, the policy and 5 regulatory division of the Office of Postsecondary 6 Ed. That hasn't -- the direct supervisor of the 7 assistant secretary ultimately reports up to the 8 media office. That also includes our grant 9 programs and all our postsecondary ed grant programs.</p> <p>10 I also receive the office of what's 11 called OCTAE, the Office of Career, Technical and 12 Adult Education. And again, they have a number of 13 grant programs, and the Perkins loan program -- 14 I'm sorry, the Perkins Act programs and those 15 report up to me.</p> <p>16 And then federal student aid also 17 reports to me. In the case of federal student 18 aid, it is a performance-based organization, and 19 so the relationship between the department and the 20 FSA is slightly different than OPE or OCTAE, the 21 other two divisions that report up to me.</p> <p>22 With regard to FSA, I am -- I have 23 oversight over the policy that is implemented by 24 FSA. So policy and operations are divided in</p>
<p>1 Department of Ed.</p> <p>2 Q Anything else?</p> <p>3 A No.</p> <p>4 Q And on the last page, that's your signature?</p> <p>5 A Yes, it is.</p> <p>6 Q Okay. And I just want to note for the record you signed this under penalty of perjury?</p> <p>7 A Yes.</p> <p>8 Q Now, I'm just -- use your declaration as a jumping off point for getting a sense of your 9 job history and then eventually your responsibilities at the Department of Education.</p> <p>10 So if we can just go to paragraph 2 which discusses your job title and 11 responsibilities.</p> <p>12 A I can see it.</p> <p>13 Q Thank you. Okay. I'm hoping you can expound upon this right now and give me a broader 14 sense of what you at this point consider your job 15 responsibilities to be?</p> <p>16 A So I serve currently as the principal deputy under secretary and am delegated the duties of under secretary at the Department of Ed.</p> <p>17 Q And what are the main areas that you</p>	<p>Page 19</p> <p>1 statute, and the operations of FSA are the domain 2 of the chief operating officer, and then policy 3 oversight is the domain of both the Office of Postsecondary Ed and then my oversight in the 4 Office of the Under Secretary.</p> <p>5 Q So who else besides you oversees policy at FSA?</p> <p>6 A Do you mean the implementation of policy or the development of policy?</p> <p>7 Q I'll ask both. First the development of policy?</p> <p>8 A So the development of policy, you know, 9 it involves the Office of Postsecondary Education, 10 it involves my office, the Office of the Secretary 11 and the Office of General Counsel.</p> <p>12 Policy development involves all of 13 those offices in the process, and in some cases the Office of Management and Budget as well.</p> <p>14 Q And then the implementation of policy, was that the second prong?</p> <p>15 A (Witness nods head.)</p> <p>16 Q Okay. And who oversees that?</p> <p>17 A So there -- at FSA, there is a policy implementation office. They are involved in the 18 actual implementation of the policy at which point</p>

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<p>1 my role becomes making sure that the 2 implementation of the policy aligns with our 3 regulations.</p> <p>4 Q Is anyone else besides you performing 5 that role of, I think as you put it, ensuring the 6 implementation of the policies within the 7 regulations?</p> <p>8 A Yes, the Office of the Secretary, the 9 Office of General Counsel and, in some cases, the 10 Office of Management and Budget.</p> <p>11 Q And when you say "the Office of the 12 Secretary," do you mean the secretary herself, or 13 are there other certain individuals that are 14 tasked with that?</p> <p>15 A There are a group of people that are 16 involved depending upon which policy decision 17 you're discussing, so in some cases it would 18 involve the secretary's chief of staff, the 19 Capitol floor to the secretary, the deputy 20 secretary. And in some cases where there's a 21 formal decision on loans, for example, the 22 secretary, you know, would be the person who would 23 sign off.</p> <p>24 So it depends on the issue. It depends 25 on the topic. But it could involve her, the</p>	<p>Page 22</p> <p>1 So in that case she did sign off. I -- I was part 2 of that meeting.</p> <p>3 In other cases, I don't always know who 4 the decision maker was. There were conversations, 5 but I don't always know who the decision maker 6 was.</p> <p>7 Q But regarding the 2019 regulations, the 8 secretary herself was a decision maker?</p> <p>9 A Oh, you're talking about our -- our 10 rule-making effort in December 2019?</p> <p>11 Q Well, I was just talking about the 12 meeting that you just referenced.</p> <p>13 A The meeting I just referenced was with 14 regard to the relief methodology --</p> <p>15 Q Okay.</p> <p>16 A -- that was determined in 2019.</p> <p>17 If you're asking me about negotiated 18 rule making, that is a fundamentally different 19 process in -- in which case, no, the secretary is 20 not -- does not, you know, directly sign off on 21 that. There's negotiator rule-making process, a 22 public comment period, a response. So that is a 23 much longer process. That is not just an effort 24 of the secretary making a decision.</p> <p>25 Q Okay. And in terms of the relief</p>
<p>1 entire group or some subset of that group.</p> <p>2 Q With regard to borrower defense 3 policies, does that include the secretary herself?</p> <p>4 A Again it would depend on the issue 5 within the -- under the umbrella of borrower 6 defense, there are many, many issues that fall 7 under that. Some could include the secretary and 8 some might not.</p> <p>9 Q And when has the secretary herself been 10 included?</p> <p>11 A Are you asking me about conversations 12 or decisions?</p> <p>13 Q I'm asking about decisions. You said 14 there are certain instances where she might become 15 personally involved, and I'm wondering what those 16 instances are if you can give me examples, if not 17 an exhaustive list?</p> <p>18 A Right. I can't give you an exhaustive 19 list because, you know, I haven't been witness to 20 every decision so I'm not always sure who exactly 21 made the decision. But I can tell you that with 22 regard to the development and approval of the new 23 relief methodology that was announced in 24 December 2019, I believe, the secretary did sign 25 off and authorize the use of a new methodology.</p>	<p>Page 23</p> <p>1 methodology decision, was she involved just in 2 that one meeting or in decision-making meetings up 3 to that meeting?</p> <p>4 MR. MERRITT: Objection: scope.</p> <p>5 BY MS. O'GRADY:</p> <p>6 Q I want to get a sense of whether or not 7 there was a single meeting where the secretary 8 signed the relief methodology or if there had been 9 previous involvement with her personally.</p> <p>10 MR. MERRITT: Well, the relief 11 technology is not a topic on which the court 12 authorized discovery.</p> <p>13 MS. O'GRADY: Well, I would disagree. 14 I believe it's related. But for purposes of just 15 getting us started, I'll move on.</p> <p>16 BY MS. O'GRADY:</p> <p>17 Q Okay. Ms. Jones, who do you report to? 18 I just want to get a sense of the general 19 reporting structure in your current role.</p> <p>20 A I report to the Secretary of Education.</p> <p>21 Q And is there anyone else between you 22 and her that you report to?</p> <p>23 A Directly or indirectly?</p> <p>24 Q I suppose -- if there's no one 25 directly, I suppose indirectly.</p>

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<p style="text-align: right;">Page 102 Page</p> <p>1        A     Well, I didn't invent the terminology, 2     but the terminology as I understand it is that 3     adjudication is step one, reviewing the merit. 4     Step two is the determination of relief. And then 5     when that is done, the borrower is notified.</p> <p>6        Q     Okay. So processing is not a term of 7     art, then? It goes adjudication, decision 8     notification?</p> <p>9        A     I think FSA uses the term "processing" 10    to mean the notification of the borrower.</p> <p>11      Q     Okay. Now, with this step-one, 12    step-two division, if a claim in step one is 13    adjudicated as denied, step two is not necessary; 14    is that right?</p> <p>15      A     I -- I don't recall exactly how the 16    10 percent decision is applied to Corinthian, so I 17    can't answer the question there.</p> <p>18      Q     Taking that aside.</p> <p>19      A     Outside of that group, I -- I wouldn't 20    imagine that if they're ineligible you'd have to 21    do a determination, so I would imagine that step 22    two the sep- -- it would be separate.</p> <p>23      Q     So in your role, you've only ever had 24    involvement with grants of borrower defense 25    applications; is that right?</p>	<p style="text-align: right;">Page 104 Page</p> <p>1        November 2019, step-one determinations were being 2     made pending the development of the new partial 3     relief methodology; is that right?</p> <p>4        A     That's what I've been told. I mean, I 5     don't have supervision over that unit, so it 6     was -- I guess you could say I'm speculating here, 7     but that is the information I was provided.</p> <p>8        Q     And, again, by whom?</p> <p>9        A     It would either -- you know, I -- I 10    am -- I'm sure Mark Brown would have given me that 11    information, but I may have also gotten it from 12    Colleen Nevin in a meeting.</p> <p>13      Q     Okay. And the second part of this 14    sentence is, you know, determinations that some 15    borrowers established successful borrower defense 16    in accordance with the applicable standard, and 17    that standard is the standard governing step-one 18    determinations; right?</p> <p>19      A     That is correct.</p> <p>20      Q     Okay. I think -- we've talked a lot 21    about your lack of involvement with that standard?</p> <p>22      A     Right.</p> <p>23      Q     I -- I just want to understand your 24    role. Is there a reason that you have had no 25    involvement in step one?</p>
<p style="text-align: right;">Page 103 Page</p> <p>1        A     I'm not involved in granting any 2     borrower defense applications. My role has been 3     around the policy for the regulations and the 4     methodology for determination of relief.</p> <p>5        Q     Okay. So my question is the 6     methodology for determination of relief is solely 7     about the percentage of relief once an application 8     has been granted; it doesn't involve a denied 9     application?</p> <p>10      A     That is correct, you know, with this 11    carve-out for this 10 percent Corinthian.</p> <p>12      Q     Okay. In paragraph 25, I want to just 13    read the first sentence of that paragraph for the 14    record. It's a little bit long.</p> <p>15      A     Sure.</p> <p>16           As explained in other declarations 17    submitted as part of this administrative record, 18    the department has continued to adjudicate claims 19    since the injunction was issued in Manriquez, 20    consistent with that injunction, including making 21    step-one determinations that some borrowers have 22    established a successful borrower defense in 23    accordance with the applicable standard.</p> <p>24      Q     Okay. So this is -- here you say that 25    claims -- this was written in November. So as of</p>	<p style="text-align: right;">Page 105 Page</p> <p>1        A     I -- I think there are two reasons. 2     One is I'm not an attorney. I -- I have no 3     expertise or professional experience or ability to 4     evaluate evidence. I just don't. So I think, you 5     know -- so one of the reasons is that, you know, 6     I'm not an attorney.</p> <p>7           But the second reason is that the -- 8     the legislation that establishes federal student 9     aid as a performance-based organization makes very 10    clear the division between policy and operations. 11    And with the borrower defense unit residing in 12    FSA, those are operational decisions. The -- the 13    application of a regulation is FSA's decision to 14    make, right. So when there is a policy question 15    about that, I get involved; but outside of the 16    policy questions, you know, they are a 17    semi-autonomous unit, so not only --</p> <p>18      Q     So what --</p> <p>19      A     -- (indiscernible) experience, you 20    know, that would be crossing the separation of 21    labor.</p> <p>22      Q     I want to understand, though, how -- 23    how do you determine what is a policy question 24    that would be appropriate for you to weigh in on?</p> <p>25      A     You know, I -- it's hard to give a</p>

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<p style="text-align: right;">Page 106 Page</p> <p>1 general rule, right, because policy -- it depends, 2 right. So the answer is it depends. But I think 3 the place that maybe best described this is that 4 policy are questions about regulations versus what 5 the BD unit which is making decisions about an 6 individual borrower's application.</p> <p>7 Q So in your understanding, there is no 8 policy to govern step-one determinations; there's 9 only an individual attorney-driven adjudication of 10 evidence?</p> <p>11 And I do not want to put words in your 12 mouth. I want to understand.</p> <p>13 A No, I mean, I think the -- the policy 14 question on step one, as I, you know, explained 15 earlier, was which state standard, right. So, you 16 know, I think we needed a general policy about how 17 do you figure out which state standard to use.</p> <p>18 Now, I'm not the one who issued that 19 policy, but, for example, do you use the state 20 where the company is located? Do you use the 21 state where the campus is located? Do you use the 22 state where the borrower is located?</p> <p>23 Q So your understanding is the only 24 policy question with regard to adjudicating 25 borrower defense applications is which state</p>	<p style="text-align: right;">Page 108 Page</p> <p>1 potential to be the highest paid employee at the 2 department because of the bonus structure, and 3 when Congress created the PBO, which I believe was 4 in 1998, they felt as though FSA as a PBO had to 5 be held accountable for their performance and 6 therefore had to have semi-autonomous operational 7 control.</p> <p>8 But Congress did not want them to be 9 the policy or the regulatory body, and Congress 10 assigned that role to the department.</p> <p>11 Q So it's your understanding of that 12 structure -- I hear you saying that that structure 13 determines in part your ability to involve 14 yourself in step-one determinations; is that 15 right?</p> <p>16 A Well, I mean, I think it's twofold; 17 right? I mean, one that is an operational 18 protocol, so I would not be involved because under 19 the way we are managing FSA, I -- I don't get 20 involved in day-to-day operation decisions. But 21 even if we did, I personally couldn't because I'm 22 not an attorney.</p> <p>23 Q Okay. So what's the difference, 24 though, between step one and step two?</p> <p>25 A The difference between step one is it's</p>
<p style="text-align: right;">Page 107 Page</p> <p>1 standard to use?</p> <p>2 A Outside of the regulatory questions 3 about whether or not breach of contract is 4 considered, right. So we have the high-level 5 policy decisions defining misrepresentation, and 6 obviously I'm involved in creating the 2019 7 regulation which sets forth a definition of 8 misrepresentation.</p> <p>9 But when it comes to determining for an 10 individual borrower whether misrepresentation 11 occurred, that's not a policy decision beyond the 12 regulatory requirement that the definition of 13 misrepresentation be applied.</p> <p>14 Q I want to go back to your statement 15 about it being performance based and you being in 16 operations.</p> <p>17 Can you clarify that for me and just 18 explain what you meant by that for me a little bit 19 more?</p> <p>20 A Sure. Because FSA is a 21 performance-based organization, they have 22 different hiring authority; they have different 23 contracting authority; and they have a different 24 pay scale. Senior leaders at FSA get bonuses. 25 The COO, the chief operating officer, has the</p>	<p style="text-align: right;">Page 109 Page</p> <p>1 the evaluation of legal evidence to make a legal 2 determination of whether misrepresentation 3 occurred. That is very different than the policy 4 which defines misrepresentation in regulations.</p> <p>5 Q Right.</p> <p>6 I suppose I'm getting at so the policy 7 that defines misrepresentation in regulations and 8 the policy that sets a schedule for determining, 9 you know, a percentage of relief borrowers on the 10 whole will be getting, why is your role different 11 with respects to step one and step two?</p> <p>12 A Well, again in step two, I am not 13 making the determination for any particular 14 borrower about what level of relief they're 15 getting. All I'm trying to do is in the same way 16 that a policy process defined misrepresentation, I 17 was involved in a policy process to define 18 financial harm. And then the BD unit applies that 19 definition.</p> <p>20 So I think you could look at what I 21 refer to as the methodology as the policy 22 definition of what constitutes financial harm. So 23 the policy is set at a very high level. This is 24 how we define financial harm, but it's the BD unit 25 that applies it to any particular borrower.</p>

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<p>1 Q And why isn't it the case with step one      2 that policy would be set on --</p> <p>3 A Policy was set in establishing the      4 definition of misrepresentation.</p> <p>5 Q And that's the extent of your      6 involvement with that?</p> <p>7 A That is the extent of my involvement is      8 in defining misrepresentation in the 2019 regs.      9 Granted, I was not involved in defining      10 misrepresentation in the 2016 regs or the 1995      11 regs, but I was involved in defining      12 misrepresentation for the 2019 regs.</p> <p>13 MS. O'GRADY: Okay. If we can go to      14 another exhibit. This will be -- if I could just      15 ask the court reporter, Dana, did I actually mark      16 Exhibit 10 or did I not? I'm hoping that I did      17 not, but just let me know either way.</p> <p>18 THE COURT REPORTER: Can you hear me?</p> <p>19 MS. O'GRADY: Now I can.</p> <p>20 THE COURT REPORTER: Okay. Just give      21 me just a second. I separated files, so I've got      22 to go into the last file.</p> <p>23 MS. O'GRADY: By my count, I'm now up      24 to Exhibit 10 because we didn't actually talk      25 about the Nevin declaration. But if I'm wrong</p>	<p>1 Q No problem.      2 A Yes, this looks like the transcript of      3 my hearing before the House Oversight Committee.      4 Q Okay. And who prepared you for this      5 testimony?      6 MR. MERRITT: Objection to the scope.      7 BY MS. O'GRADY:      8 Q I believe you can still answer.      9 MR. MERRITT: Okay. Go ahead for now.      10 THE WITNESS: Largely I prepared myself      11 for the hearing, but, you know, there were      12 meetings with, you know, attorneys in the Office      13 of General Counsel. And -- and certainly people      14 on my team, you know, helped me pull documents to      15 review.      16 BY MS. O'GRADY:      17 Q Okay. And what kind of documents did      18 you review?      19 MR. MERRITT: Objection as to calling      20 for privileged information as well.      21 BY MS. O'GRADY:      22 Q I certainly don't want any privileged      23 information, but if there were members of your      24 team who were not lawyers that you worked with or      25 to the extent you prepared yourself by reviewing</p>
<p>1 about that and it's Exhibit 11, that's fine. Just      2 please let me know so I don't mess up the      3 numbering.</p> <p>4 THE COURT REPORTER: I have 9 as the      5 last one you marked.</p> <p>6 MS. O'GRADY: I can tell you which      7 document we're going to open. It's a PDF in the      8 main folder, Hearing Examining For-Profit College      9 Oversight.</p> <p>10 THE COURT REPORTER: I'm sorry, Maggie.      11 Nine is the last one you marked. Ten is next.      12 Could you hear me then?</p> <p>13 MS. O'GRADY: No. If you could just      14 tell me if the next exhibit is 10 or 11?</p> <p>15 I see it in the chat. Thank you.</p> <p>16 So this exhibit will be Exhibit 10 for      17 this deposition.</p> <p>18 (Jones Deposition Exhibit 10 was marked      19 for identification and attached to the      20 transcript.)</p> <p>21 BY MS. O'GRADY:</p> <p>22 Q And, Ms. Jones, do you recognize this      23 document?</p> <p>24 A Sorry. I had to get my cursor over to      25 my microphone.</p>	<p>1 previous memoranda, I'd like to know what those      2 were.      3 A Well, this is a totally different      4 matter. This has nothing to do with borrower      5 defense.      6 Q Well, I believe -- I believe some does.      7 We can go to that. But did -- I take from your      8 answer you mean you did not review any documents      9 about borrower defense in preparation for this      10 testimony?      11 MR. MERRITT: Again, objection. It's      12 calling for privileged company.      13 MS. O'GRADY: That's fine. I'll move      14 on.      15 BY MS. O'GRADY:      16 Q I want to talk about your exchange with      17 Congresswoman Pressley, and this is about borrower      18 defense. I think the easiest page numbering is      19 from the top of the page, and it's 49.      20 A Yes, I remember this part of the      21 dialogue well.      22 Q So at the bottom, Congresswoman      23 Pressley asked, Ms. Jones, at this moment, do you      24 know how many claims remain unprocessed?      25 And here she is talking about borrower</p>

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114 to 117

<p style="text-align: right;">Page 114 Page</p> <p>1 defense claims; correct?</p> <p>2 A Yes, so she's asking me about the</p> <p>3 number of claims.</p> <p>4 Q If you want to just read your answer</p> <p>5 for the record.</p> <p>6 A (Witness reviews document.) Okay.</p> <p>7 Q So beginning there, It is a number that</p> <p>8 changes from time to time.</p> <p>9 A Oh, you want me to read it out loud?</p> <p>10 Q Yes, if you don't mind.</p> <p>11 A Okay. Let me scroll back up.</p> <p>12 It is a number that changes from time</p> <p>13 to time. It is probably in the neighborhood of</p> <p>14 160,000. The last official count I got was</p> <p>15 158,000, so I'm assuming it's somewhere in the</p> <p>16 name of 160,000 by now.</p> <p>17 Q Okay. And then on the next page, she</p> <p>18 says -- this is at the top of the page 50 --</p> <p>19 Ms. Jones, for the record, yes or no, is there</p> <p>20 currently a policy which restricts the office of</p> <p>21 Federal Student Aid from adjudicating or</p> <p>22 processing any borrower defense claims that did</p> <p>23 not stem from school closure?</p> <p>24 And there's a little bit of</p> <p>25 interruption there. And the bulk of your answer</p>	<p style="text-align: right;">Page 116 Page</p> <p>1 Q Okay.</p> <p>2 A So it was my understanding that they</p> <p>3 were continuing to look at evidence, but I don't</p> <p>4 have direct knowledge.</p> <p>5 Q And of the pending claims that you've</p> <p>6 stated were in the neighborhood of 160,000, what</p> <p>7 schools do those 160,000 borrowers attend?</p> <p>8 MR. MERRITT: Objection. It's</p> <p>9 overbroad.</p> <p>10 BY MS. O'GRADY:</p> <p>11 Q Are they all CCI?</p> <p>12 A I -- I would have to go back and look,</p> <p>13 but I -- no. I don't know what percentage of them</p> <p>14 were CCI, but, no, by this point in time, there</p> <p>15 were claims from -- from, you know, a list of</p> <p>16 institutions.</p> <p>17 Q Okay. So I -- I guess I'm still trying</p> <p>18 to understand why the injunction in the Calvillo</p> <p>19 Manriquez matter would have prevented step-one and</p> <p>20 step-two determinations from those who did not</p> <p>21 attend CCI schools?</p> <p>22 A I don't think I've ever suggested that</p> <p>23 step one stop. I don't know. I'm not involved in</p> <p>24 step one. I was told it continued, but I don't</p> <p>25 have direct knowledge. So I can't tell you for</p>
<p style="text-align: right;">Page 115 Page</p> <p>1 is then where you begin. There is not a policy</p> <p>2 that prevents.</p> <p>3 Would you just read that part of your</p> <p>4 answer out loud for the record?</p> <p>5 A Sure.</p> <p>6 There is not a policy that prevents the</p> <p>7 review of claims. However, we are not able to</p> <p>8 determine the level of harm or the level of relief</p> <p>9 that a borrower should get because the methodology</p> <p>10 we use is now being challenged by the California</p> <p>11 courts, so we continue to process.</p> <p>12 Q Okay. So I want to understand what you</p> <p>13 mean here by there's not a policy that prevents</p> <p>14 their view of claims.</p> <p>15 A Yes. There was no policy in place to</p> <p>16 prevent Colleen Nevin's team from continuing to</p> <p>17 review evidence, to review claims, to evaluate the</p> <p>18 merit of an application.</p> <p>19 Q And I think you said earlier today that</p> <p>20 you do not know either way if she and her team</p> <p>21 were doing that?</p> <p>22 A Right. I mean, I -- you know, I was</p> <p>23 told on a level that we're continuing to review,</p> <p>24 but I don't have direct knowledge of that. I</p> <p>25 don't supervise her.</p>	<p style="text-align: right;">Page 117 Page</p> <p>1 certain whether it did or it didn't, but there was</p> <p>2 certainly no policy to stop step one.</p> <p>3 Q Okay. Assuming step one had continued,</p> <p>4 what was preventing the department from doing step</p> <p>5 two for non-CCI students?</p> <p>6 A A lack of a methodology to do step two.</p> <p>7 Q And what is the reason for the lack of</p> <p>8 a methodology at this point?</p> <p>9 A Because the Northern District of</p> <p>10 California had determined that our methodology</p> <p>11 potentially involved a Privacy Act violation.</p> <p>12 Q So at the point of the injunction of</p> <p>13 Calvillo Manriquez, was it Ed's intention to use</p> <p>14 that partial relief methodology for all pending</p> <p>15 borrower defense claims step-two determinations?</p> <p>16 A I don't know what the intent was of the</p> <p>17 2017 methodology at the time.</p> <p>18 Q Here, you testified that there could be</p> <p>19 no step-two determinations because of the</p> <p>20 injunction, and --</p> <p>21 A Correct.</p> <p>22 Q -- those 160,000 borrowers are not only</p> <p>23 CCI graduates. So in effect, that methodology</p> <p>24 being enjoined prevented all step-two</p> <p>25 determinations; is that right?</p>

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<p>1        A     Generally it was an email. There may      2        have at times been an attachment with a table, but      3        I think generally it was an email, and -- and then      4        ultimately I believe that the data warehouse at      5        FSA added this as a public feature. I believe      6        these data were then posted for public knowledge      7        on the data warehouse.</p> <p>8        Q     Okay. And when were these updates --      9        when did they start getting sent?</p> <p>10      A     I don't remember the exact date, but      11     I -- I recall that it was after the December 2019      12     implementation of the new methodology. So there      13     may have been, you know, earlier updates from time      14     to time on total numbers, but the regular updates      15     were after the methodology had been approved and      16     implemented.</p> <p>17      Q     And how were the metrics used?</p> <p>18      A     What do you mean by "how were the      19     metrics used"?</p> <p>20      Q     The information was reviewed by the      21     secretary. What is your understanding of its      22     purpose? Was the -- I'll ask that question. If      23     you need clarification, I can add.</p> <p>24      A     I mean, I think the purpose was      25     twofold. You know, general information.</p>	<p>1        A     I believe at that time the updates were      2        about total number of claims. What I don't recall      3        is whether or not those updates included numbers      4        on adjudications. I just can't remember whether      5        they were included at that time. I just -- I -- I      6        can't remember.</p> <p>7        Q     So you don't remember if updates had      8        included whether or not any claims -- any      9        decisions on the merits had been communicated to      10      students?</p> <p>11      A     I -- I -- you know, I just can't      12     remember the specific, you know, updates that came      13     through. You know, I just can't remember.</p> <p>14      Q     But at that point before the 2019      15     regulations were in effect and these updates      16     began, had you talked to anyone about the delay?</p> <p>17      A     What do you mean by "talked to anyone      18     about the delay"?</p> <p>19      Q     You know, were there any meetings or      20     conversations you had about the fact that      21     decisions were not being sent out?</p> <p>22      A     Well, when I came into my role, you      23     know, the -- the decision had been made that      24     because the Northern District of California had      25     concerns about the Privacy Act that we could not</p>
<p>1        Obviously, a policy decision had been made and      2        people wanted to know if the process was moving.</p> <p>3        I believe that there -- there was a      4        significant amount of hiring as well, and I think      5        part of that was to, you know, evaluate, you know,      6        the size of the team, you know, do you need more      7        people; do you need fewer people.</p> <p>8        I'm not involved in personnel      9        decisions, but, you know, I think part of that was      10      also, you know, viewed by people to see if the      11      team was large enough. I mean, the team expanded      12      significantly during this time period.</p> <p>13      Q     So you said at the start of that answer      14      that people wanted to know the process was moving.      15      What do you mean by that?</p> <p>16      A     At a general level, you know, it's one      17      thing to develop a policy, and it's another to      18      make sure that those implementing it can do so.</p> <p>19      And, so, I think there was interest in      20      making sure that it was a policy that -- you know,      21      that operationally could be implemented.</p> <p>22      Q     Prior to the -- prior to this time,      23      around December 2019, when these -- when the      24      partial relief methodology went into effect, had      25      there been updates about progress or lack thereof?</p>	<p>1        apply that methodology; that we had to wait and      2        find out whether or not it was going to be deemed      3        that the use of Social Security Administration      4        data was a violation of the Privacy Act.</p> <p>5        Q     While you were waiting, were -- was      6        another method being developed?</p> <p>7        A     I started developing the team -- you      8        know, I pulled together the team and we started      9        working on that methodology in, you know, I think,      10      that April, May, June time frame of 2019.</p> <p>11      Q     I want to go back to the memos that      12      updated the secretary on the progress. Do you      13      know if those metrics were ever used to determine      14      anyone's bonus?</p> <p>15      A     I'm not involved in the determination      16      of anyone's bonus, so I don't know.</p> <p>17      Q     Do you know if those metrics were used      18      to determine anyone's job performance rating or      19      job performance review?</p> <p>20      MR. MERRITT: Objection to the scope of      21      these questions.</p> <p>22      BY MS. O'GRADY:</p> <p>23      Q     Ms. Jones, I think you can still      24      answer.</p> <p>25      MR. MERRITT: Go ahead.</p>

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<p>1       into your position, did you understand it to be      2       important to clear that backlog? Not about what      3       caused it, but did you understand that it was      4       important to clear the backlog of claims?</p> <p>5       A     Absolutely I understood it was      6       important to clear out the backlog of claims, but      7       we had been halted in our path by the judge of the      8       Northern District of California.</p> <p>9       Q     So throughout the time before the --      10      before the methodology went into effect in      11      December 2019 and the claim decisions restarted,      12      was the backlog an ongoing concern of yours?</p> <p>13      MR. MERRITT: Again, objection. That's      14      calling for mental impressions and deliberative      15      privileged information.</p> <p>16      MS. O'GRADY: I'll rephrase.</p> <p>17      BY MS. O'GRADY:</p> <p>18      Q     Ms. Jones, what steps did you take to      19      clear the backlog prior to the 2019 methodology      20      going into effect in December of 2019?</p> <p>21      A     The instructions that the borrower      22      defense unit was operating under was that the      23      Northern District of California had determined      24      that we -- that the methodology was potentially a      25      violation of the Privacy Act. Quite frankly, you</p>	<p>1       California enjoined the methodology.      2       So you're asking me to speculate what      3       could of, should of. At the end of the day, we      4       hadn't completed adjudicating Corinthian claims      5       when the judge enjoined the methodology.</p> <p>6       Q     So when the injunction came down, it      7       was -- you know, you essentially said pencils      8       down; we'll just wait for a decision?</p> <p>9       A     I didn't say pencils down.</p> <p>10      Q     Your understanding was that meant      11      because that was prior to your role, but your      12      understanding was that since the injunction, it      13      was pencils down on --</p> <p>14      A     My understanding --</p> <p>15      Q     -- on that methodology?</p> <p>16      A     My understanding was that because the      17      judge had ruled that this was potentially a      18      violation of the Privacy Act, I -- you know, I      19      don't think the department is in the practice of      20      knowingly violating a law.</p> <p>21      So when this was in question, I -- I      22      think that everybody was waiting for the judge to      23      determine whether or not it was a violation of the      24      Privacy Act.</p> <p>25      Q     So when the new methodology was</p>
<p>1       know, the question that I asked is have we heard      2       from the Northern District of California. I mean,      3       the Northern District of California was the      4       decision maker on this. And, yes, I would have      5       loved for them to have issued a decision promptly.</p> <p>6       Q     Are you aware that -- that the      7       Department of Education argued in the Ninth      8       Circuit that the methodology was only intended for      9       Corinthian students and not for those who had      10      attended schools other than Corinthian?</p> <p>11      A     I'm not aware of the testimony one way      12      or the other in that case.</p> <p>13      Q     So you'd be surprised to know that it      14      was Ed's position in that case that the      15      methodology was only ever intended for Corinthian      16      students?</p> <p>17      A     I -- the -- I would not be surprised to      18      know that the methodology was developed for      19      Corinthian students. Those were the students that      20      were at the center of that case. The question of      21      whether or not that methodology would be applied      22      to additional borrowers was a question that we      23      didn't get to. I never got an answer to that      24      question because before we finished adjudicating      25      the Corinthian borrowers, the Northern District of</p>	<p>1       developed, was that developed with the express      2       purpose of applying to all schools, not just      3       Corinthian?</p> <p>4       A     I -- I can't speak to what will      5       ultimately be determined about the borrowers, you      6       know, in -- in involve -- I can't predict what the      7       district -- the district court in the --</p> <p>8       Q     I'm not asking you about that. What I      9       want to know is -- so now we have a new      10      methodology --</p> <p>11      A     Yes.</p> <p>12      Q     -- not enjoined by the court.</p> <p>13      Is that new methodology for -- will      14      that be applied to every single step-one      15      determination? So a step-one determination is      16      made. The borrower defense claim is granted. It      17      goes to step two. And this new methodology is for      18      every single student?</p> <p>19      A     The new methodology is for every      20      applicant; however, in the case that an applicant      21      has already been awarded more, certainly you're      22      not going to go back and apply the new methodology      23      and tell them that they owe us money back, right.      24      I mean, that -- that -- you know, we're not going      25      to go back in time. But, yes, moving forward, the</p>

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<p>1       loud for the record?</p> <p>2       A     We acknowledge that there is a risk</p> <p>3       that unsubstantiated claims could be filed in</p> <p>4       large numbers to target institutions for the</p> <p>5       purpose of damaging their reputations before the</p> <p>6       department can adjudicate the claims as</p> <p>7       unsubstantiated. Indeed, we are aware of firms</p> <p>8       and advocacy groups that are engaging in such</p> <p>9       coordinated efforts against certain institutions.</p> <p>10      Q     So what are you referring to or what is</p> <p>11      this referring to here?</p> <p>12      <b>MR. MERRITT: Objection to the scope.</b></p> <p>13      <b>We're not here to litigate the 2019 regulation.</b></p> <p>14      MS. O'GRADY: No, but I think it goes</p> <p>15      to -- the 2019 regulations are based on -- based</p> <p>16      on policy views informed by what has happened and</p> <p>17      what is understood to have happened prior.</p> <p>18      So this is a -- I'm asking the witness</p> <p>19      about what this means. This is the basis for</p> <p>20      developing new regulations. So I'll ask my</p> <p>21      question. I think will be very much within the</p> <p>22      scope.</p> <p>23      BY MS. O'GRADY:</p> <p>24      Q     What is the basis for the belief that</p> <p>25      there's a risk of unsubstantiated claims filed in</p>	<p>1       A     I don't know what you mean by "the</p> <p>2       past." Could you -- what's your time frame?</p> <p>3       Q     During your tenure at the Department of</p> <p>4       Ed.</p> <p>5       MR. MERRITT: I'm going to object to</p> <p>6       this line of questioning as not within the court's</p> <p>7       order.</p> <p>8       MS. O'GRADY: I think it is within the</p> <p>9       court's order based on the reason for the delay.</p> <p>10      MR. MERRITT: Again, at that level of</p> <p>11      generality, that's not --</p> <p>12      <b>MS. O'GRADY: I'm not being very</b></p> <p>13      <b>general. I'm pointing to a sentence in the 2019</b></p> <p>14      <b>regs that these regulations are made based on a</b></p> <p>15      <b>belief of a risk of unsubstantiated claims filed</b></p> <p>16      <b>in large numbers. If that is a belief of the</b></p> <p>17      <b>department as a whole, I think that's quite</b></p> <p>18      <b>germane to whether or not the delay was caused by</b></p> <p>19      <b>the difficulty of reviewing borrower defense</b></p> <p>20      <b>applications.</b></p> <p>21      <b>MR. MERRITT: I don't see how that's</b></p> <p>22      <b>germane. I mean, it's going to -- as Diane said,</b></p> <p>23      <b>the regulation was promulgated for a number of</b></p> <p>24      <b>reasons, and your -- and this was included in the</b></p> <p>25      <b>regulation, but it's not -- it doesn't apply to</b></p>
<p>1       large numbers?</p> <p>2       A     You know, I -- again, I want to -- I</p> <p>3       want to reiterate, you know, this reg is hundreds</p> <p>4       of pages long, and there are lots of public</p> <p>5       comments. And, so, the answer or the response to</p> <p>6       one single comment is not the basis for a</p> <p>7       regulatory decision. It's hundreds of pages long</p> <p>8       because there are lots and --</p> <p>9       Q     Okay.</p> <p>10      A     -- lots of comments and considerations.</p> <p>11      So I think you're trying to ask me</p> <p>12      to --</p> <p>13      Q     I can simplify the question.</p> <p>14      Do you believe that there is a risk of</p> <p>15      unsubstantiated claims that can be filed in large</p> <p>16      numbers?</p> <p>17      A     There is always the risk that somebody</p> <p>18      would submit an application that would not qualify</p> <p>19      for borrower defense relief.</p> <p>20      Q     Okay. One person or large numbers of</p> <p>21      people?</p> <p>22      A     I think there could be large numbers of</p> <p>23      people.</p> <p>24      Q     Do you think there have been large</p> <p>25      numbers in the past?</p>	<p>1       pending claims, as she said.</p> <p>2       <b>MS. O'GRADY: I want to understand the</b></p> <p>3       <b>reason for department policy and whether or not a</b></p> <p>4       <b>belief in a risk of unsubstantiated claims that</b></p> <p>5       <b>can be filed in large numbers is a basis for that</b></p> <p>6       <b>policy as written in the regulation. It's a --</b></p> <p>7       <b>MR. MERRITT: Are you asking her if</b></p> <p>8       <b>it's a reason for the delay in this case or -- or</b></p> <p>9       <b>whether it justified the 2019 regulation which is</b></p> <p>10      <b>not at issue in this case?</b></p> <p>11      <b>MS. O'GRADY: Well, I can -- I can ask</b></p> <p>12      <b>the question about delay, but what I would like to</b></p> <p>13      <b>know is if the witness, who's in charge of policy,</b></p> <p>14      <b>agrees with this statement about the risk of</b></p> <p>15      <b>unsubstantiated claims.</b></p> <p>16      <b>MR. MERRITT: You can answer that</b></p> <p>17      <b>question.</b></p> <p>18      THE WITNESS: Okay. First of all, I'm</p> <p>19      not in charge of policy. I have oversight</p> <p>20      responsibility over the policy-making process. I</p> <p>21      do not solely own it. It --</p> <p>22      BY MS. O'GRADY:</p> <p>23      Q     I didn't mean -- I didn't mean to</p> <p>24      misstate your responsibilities there, but if you</p> <p>25      could answer the question, do you -- do you agree</p>

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<p>1 MS. O'GRADY: And file name      2 A09-Borrower Defense to Repayment FSA PowerPoint      3 to the Secretary is marked as Exhibit 12.      4 (Jones Deposition Exhibit 12 was marked      5 for identification and attached to the      6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q Okay. And now we are going to go back      9 to Exhibit 2, your declaration. And this time      10 we're going to look at paragraph 26.</p> <p>11 A Okay. I found it. Twenty-six?</p> <p>12 Q Yes.</p> <p>13 So the bottom of this page, middle of      14 the paragraph, it states, The department has been      15 working to develop documents to provide a more      16 robust explanation for borrowers whose claims are      17 denied.</p> <p>18 A Yeah. I must be in the wrong place.      19 Where are you again?</p> <p>20 Q I am at the bottom of page 10, the end      21 of paragraph 26 that begins on that page.</p> <p>22 A Ah, okay. I'm there now.</p> <p>23 Q Okay. So -- so here you write, The      24 department has been working to develop documents      25 to provide a more robust explanation for borrowers</p>	<p>1 A Yes.      2 Q Okay. So the document -- the document      3 here is referring to a template denial notice?      4 A Yes.      5 Q And then on the next page -- well, it's      6 the continuing page of paragraph 26, which is      7 page 11. So at the top it begins, Once these      8 documents are developed, the department needs to      9 work with each of its servicers to put the process      10 of loan relief and borrower notification in      11 process, which requires contract updates with each      12 of the federal student aid loan servicers that      13 service direct loans.      14 So that's what you were referring to      15 just now, the contractors doing the merge?      16 A Right. So every time we ask a servicer      17 to do anything, notify a borrower, create a new      18 letter, anything, it's a change order and an      19 additional fee that has to be negotiated.      20 Q So that includes sending a denial      21 letter?      22 A It is my understanding that the      23 servicers issued -- issued all the letters, but      24 you'd have to check with Colleen Nevin. She would      25 know better than I.</p>
<p>1 whose claims are denied.      2 And what documents is that sentence      3 referring to?</p> <p>4 A (Witness reviews document.)      5 I believe this is referring to the      6 letter that the servicer would send to the      7 borrower following a decision.</p> <p>8 Q And the servicer meaning what?</p> <p>9 A So federal student aid does much of its      10 operational business through contract servicers,      11 and so the servicers would be the entities that      12 would actually send the letter to the borrower.</p> <p>13 Q Does FSA draft the letter?</p> <p>14 A FSA creates the template and the      15 information to fill the servicer. It is my      16 understanding that the servicer or some other      17 contractor does the merge file. That's my      18 understanding. I haven't -- I -- I don't work in      19 the systems.</p> <p>20 Q Right.</p> <p>21 A My understanding is that a servicer or      22 a contractor does the merge.</p> <p>23 Q And by doing the merge, you mean puts      24 the information about a certain borrower into the      25 template provided by FSA?</p>	<p>1 Q When you say "servicer," you mean --      2 what is a servicer? That's different from a loan      3 servicer?      4 A It is a loan servicer.      5 Q So you're referring to loan servicers,      6 okay.      7 A And -- and -- and, you know -- yes.      8 Simply stated yes, we're talking about loan      9 servicers here.      10 Q So the next sentence, it says, It takes      11 longer to develop decision letters that provide an      12 explanation for each borrower of why their claim      13 was denied, but we believe this investment of time      14 is important so that borrowers understand the      15 basis for the decision, which is vital to      16 instilling confidence in the process.      17 So in this paragraph, you've said the      18 departments are working to develop these      19 documents -- these denial letters.      20 Is that process complete? Has the      21 department done so?      22 A The department has developed denial      23 letters that cover the -- that cover the -- the      24 kinds of situations we have seen so far, but it is      25 always possible that some new category arises and</p>

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<p style="text-align: right;">Page 190 Page</p> <p>1 a new letter has to be developed.</p> <p>2 So I can't say that this is the full</p> <p>3 and complete final census, but the attempt was to</p> <p>4 develop letters that -- that could be used to</p> <p>5 communicate regardless of the school the borrower</p> <p>6 attended.</p> <p>7 Q Okay. And then the next sentence is,</p> <p>8 This has taken longer than we hoped but the</p> <p>9 notices are finished and we are now working with</p> <p>10 our contracting officials and loan services to</p> <p>11 enter these notices into servicer systems.</p> <p>12 So this has taken longer than we hoped.</p> <p>13 How long did you hope it would take to develop</p> <p>14 these letters?</p> <p>15 A Our -- I can't remember what -- I can't</p> <p>16 remember what I hoped. I -- I just know that, you</p> <p>17 know, it -- it took what felt like a long time.</p> <p>18 Q And what are the factors that made it</p> <p>19 take what felt like a long time?</p> <p>20 A The complexity -- the complexity of the</p> <p>21 situation.</p> <p>22 Q And what do you mean by that?</p> <p>23 A For example, there are some borrowers</p> <p>24 who have loans that will be adjudicated under all</p> <p>25 three regulations. How do you -- you know, we</p>	<p style="text-align: right;">Page 192 Page</p> <p>1 The complexity was do we try in one</p> <p>2 letter to explain well, these loans were</p> <p>3 adjudicated under California state law, blah,</p> <p>4 blah, blah, but these loans were adjudicated under</p> <p>5 a federal standard. And the question was is it</p> <p>6 better to try and do that all in one letter?</p> <p>7 Should we send two letters, one for each set of</p> <p>8 adjudications?</p> <p>9 So it becomes complicated in deciding</p> <p>10 what -- what content.</p> <p>11 In addition, because for Corinthian</p> <p>12 borrowers a decision had been made that all of</p> <p>13 those borrowers would get a minimum of 10 percent</p> <p>14 relief if they were part of the class, we had to</p> <p>15 have letters that explained the 10 percent to</p> <p>16 Corinthian borrowers, but that 10 percent had not</p> <p>17 been -- it was not part of a policy for other</p> <p>18 schools. It just hadn't -- hadn't, you know,</p> <p>19 gotten there yet.</p> <p>20 Q So the denial letters that identify or</p> <p>21 that are dealing with loans that you say are under</p> <p>22 different regulations, has that letter been</p> <p>23 developed?</p> <p>24 A I believe that the letter has been</p> <p>25 developed for under the state standard. And let</p>
<p style="text-align: right;">Page 191 Page</p> <p>1 were trying to figure out what's the right way to</p> <p>2 manage. Do we send one letter for all three</p> <p>3 adjudications? Do we separate them into three</p> <p>4 separate adjudications?</p> <p>5 So it -- it gets complicated. There's</p> <p>6 a -- you know, when borrowers consolidate loans,</p> <p>7 they don't always understand that they've reset,</p> <p>8 you know, the clock, right. So there are -- is</p> <p>9 it -- the student loan program is a very</p> <p>10 complicated program, and there's just a lot of</p> <p>11 complexity around the potential combinations.</p> <p>12 Q Okay.</p> <p>13 A We have borrowers who, you know, left</p> <p>14 the program and came back or maybe, you know,</p> <p>15 completed one degree and now they're back for a</p> <p>16 second.</p> <p>17 So it's just a complicated --</p> <p>18 Q With respect to the letters that were</p> <p>19 being developed, how do the letters reflect those</p> <p>20 complications?</p> <p>21 A We had to decide, for example, whether</p> <p>22 the letter should have a fill in the blank. So</p> <p>23 let's say a borrower had loans adjudicated under</p> <p>24 the '95 regs and the 2016 regs, meaning under the</p> <p>25 state standard and under the federal standard.</p>	<p style="text-align: right;">Page 193 Page</p> <p>1 me think about if it's been developed for</p> <p>2 the regs -- and -- under the federal standard.</p> <p>3 You know, the longer I recall seeing</p> <p>4 was to respond under the state standard, which is</p> <p>5 more complicated than the federal standard, I</p> <p>6 don't recall whether I've seen a federal standard</p> <p>7 letter yet.</p> <p>8 Q Okay. So and when you say a letter</p> <p>9 under the state standard, you're referring to a</p> <p>10 letter under the '95 regulations?</p> <p>11 A Correct.</p> <p>12 Q Okay. And that's -- okay.</p> <p>13 So besides -- and I think my question a</p> <p>14 couple of questions ago was, you know, what are</p> <p>15 some of the factors that made the process of</p> <p>16 developing this letter -- this denial template</p> <p>17 take longer than you had hoped, and you said one</p> <p>18 of them was having to do with a letter under the</p> <p>19 state standard and the federal standard.</p> <p>20 Is that right?</p> <p>21 A More than one. That was one example.</p> <p>22 Q Yeah. So my next question is what are</p> <p>23 some other factors besides that one?</p> <p>24 A Some other factors are -- and this gets</p> <p>25 very weedy, but the name of the school that the</p>



<p style="text-align: right;">Page 202 Page</p> <p>1 Q Are you the person who would give final 2 sign-off on the use of these templates?</p> <p>3 A No.</p> <p>4 Q Who is that person?</p> <p>5 A Again, I -- I don't -- I don't know who 6 actually signs off on these. I mean, there's a 7 departmental process, and I -- I can't tell you 8 who the final signer is on -- on this document.</p> <p>9 Q Would the secretary review these?</p> <p>10 A I don't -- I don't know. I don't know 11 if the secretary would -- would review this 12 document. It -- it's possible, but I don't know.</p> <p>13 Q And what was your involvement in 14 drafting these?</p> <p>15 A As -- as -- you know, it was an editing 16 role. I -- it would have been an editing role in 17 response to somebody else's document.</p> <p>18 Q Okay. Now, I want to look at -- well, 19 first -- first I'll ask, so C is for 20 non-Corinthian borrowers for schools that do not 21 have common evidence. And D is for non-Corinthian 22 borrowers who went to school that do have common 23 evidence.</p> <p>24 Q What is meant by "common evidence"?</p> <p>25 A You'd have to ask Colleen Nevin, but I</p>	<p style="text-align: right;">Page 204 Page</p> <p>1 A I think it was A. It might have been 2 B. But let's go up to A and look. 3 (Witness reviews document.) 4 So A -- so for the Corinthian 5 borrowers, they were all adjudicated under the 6 California state law, so that's why this letter 7 says California in the template.</p> <p>8 Q Right. On page 2 in the template. 9 Okay.</p> <p>10 A But in -- 11 Q And then -- 12 A -- in the others, the attorney in the, 13 you know, decision/reason or whatever, that's 14 where -- that's where they can state which 15 standard was used for the adjudication.</p> <p>16 Q Okay. And on the template, where do 17 they insert the state law?</p> <p>18 A So in template B, for example, where it 19 says, Review recommendation reason, right, the 20 reason would be potentially dependent upon the 21 state law so -- so that -- that is -- that's 22 where -- I think that's the place where the 23 attorney would insert it.</p> <p>24 Q Okay. And, so, that review recommendation reason, that's also in -- that's</p>
<p style="text-align: right;">Page 203 Page</p> <p>1 Q I think that means -- well, I think you should ask 2 Colleen Nevin, but I -- I think it means to 3 distinguish between evidence provided by the 4 student versus evidence that the department may 5 have in its possession, but you'd need to check 6 with her for the specific terminology.</p> <p>7 Q Well, let's look at the paragraph 8 applicable law, and that is -- on exhibit D, it is 9 the first page, middle, and it says, For direct 10 loans first disbursed prior to July 1st, 2017, a 11 borrower may be eligible for a discharge 12 (forgiveness) of part of all of one or more direct 13 loans if the borrower's school engaged in acts or 14 omissions that would give rise to a cause of 15 action against the school under applicable state law.</p> <p>17 A Uh-huh.</p> <p>18 Q So is there more information about 19 which state law is being applied for these 20 adjudications in these letters?</p> <p>21 A Well, you know, if you go up to A 22 for -- I -- I can scroll through this one, but if 23 you go up through A, there's actually a place 24 where it would state the state law standard.</p> <p>25 Q Okay. Let's look at that in A.</p>	<p style="text-align: right;">Page 205 Page</p> <p>1 A also under the allegation template in C and D. 2 Q And, so, your understanding is that's 3 where an attorney would write what state law they 4 were applying?</p> <p>5 A That's my understanding.</p> <p>6 Q Okay. And that's true for -- I'm 7 looking at template C, and also let's look at 8 template D, allegation type, so that 9 recommendation reason portion is where they would 10 insert the state law.</p> <p>11 Q So when you reviewed these letters, is 12 that your understanding of what would happen?</p> <p>13 A Yes.</p> <p>14 Q I have a -- I want to go back to the 15 common evidence question. If several borrowers 16 said the same thing, would that be considered 17 common evidence or individual evidence?</p> <p>18 A I don't know. You'd have to ask 19 Colleen. I don't know how they review evidence.</p> <p>20 Q And your understanding of the meaning 21 of common evidence as being something that the -- 22 that the department has, if they had in their 23 possession, you know, a whole group of borrowers 24 making the same allegation, would that -- would 25 that be included just in your definition as you</p>

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<p style="text-align: right;">Page 210 Page</p> <p>1 just want to make sure I'm not missing it.</p> <p>2 A Yeah, I agree that this denial doesn't</p> <p>3 include one, but I don't know why.</p> <p>4 Q You don't know why.</p> <p>5 Do you have any idea as to why it might</p> <p>6 not include one?</p> <p>7 A You know, again, I could speculate, but</p> <p>8 I didn't review the --</p> <p>9 Q Speculate away.</p> <p>10 A You know, if -- if -- and I don't -- I</p> <p>11 haven't read -- so, I mean, if -- if the student</p> <p>12 actually didn't have a loan.</p> <p>13 Q If he didn't have a loan, would he</p> <p>14 receive that form denial D template, or would</p> <p>15 there be a different kind of notice he would</p> <p>16 receive saying that you don't even have a loan?</p> <p>17 A I can't remember which template would</p> <p>18 be used for I don't have a loan. I'm just giving</p> <p>19 you an example of where there could be a denial</p> <p>20 that doesn't involve the state standard and it</p> <p>21 would be because it doesn't involve -- you know,</p> <p>22 it doesn't meet the federal standard, doesn't have</p> <p>23 a loan or, you know --</p> <p>24 Q So it would be -- is it your view that</p> <p>25 it would be an unusual case for a denial notice</p>	<p style="text-align: right;">Page 212 Page</p> <p>1 standard would be applied. I mean, as the</p> <p>2 template says, the temp- -- and his letter</p> <p>3 actually says, For direct loans first disbursed</p> <p>4 prior to July 1st, 2017, a borrower may be</p> <p>5 eligible for a discharge, et cetera, for a cause</p> <p>6 of action under -- against the school under</p> <p>7 applicable state law.</p> <p>8 So given that statement of applicable</p> <p>9 law, that's saying we're going to apply the state</p> <p>10 law. And, so, when state law is going to be</p> <p>11 applied, your expectation would be that the</p> <p>12 borrower would be told the law of which state is</p> <p>13 being applied?</p> <p>14 MR. MERRITT: Objection: speculative.</p> <p>15 BY MS. O'GRADY:</p> <p>16 Q When a borrower receives a denial</p> <p>17 notice that gives this notice about what law</p> <p>18 applies, is it your expectation that the letter</p> <p>19 would include which law applies?</p> <p>20 MR. MERRITT: Objection: speculative.</p> <p>21 MS. O'GRADY: I'm really just asking</p> <p>22 about what the template -- how the template is</p> <p>23 used and how the witness expects the template to</p> <p>24 be used. I do think it's already on the record so</p> <p>25 I can move on.</p>
<p style="text-align: right;">Page 211 Page</p> <p>1 based on form denial D to not include the state</p> <p>2 standard used?</p> <p>3 A I don't know what's usual or not usual</p> <p>4 because I don't do the adjudication. I --</p> <p>5 Q Right.</p> <p>6 A -- don't --</p> <p>7 Q But when we were talking about the</p> <p>8 template just now, your expectation was that it</p> <p>9 would include the specific state standard when it</p> <p>10 was sent out?</p> <p>11 A If the decision was based on the state</p> <p>12 standard.</p> <p>13 Q Okay. And under what circumstances</p> <p>14 could a decision not be based on a state standard?</p> <p>15 A If it doesn't meet the federal</p> <p>16 standard, the application was incomplete, no</p> <p>17 evidence was submitted, no claim of</p> <p>18 misrepresentation was made, those are some</p> <p>19 examples I can think of. But, again, I don't</p> <p>20 adjudicate claims. I can't imagine all the</p> <p>21 examples because I haven't seen them.</p> <p>22 Q Okay. But a standard application, say,</p> <p>23 that alleges misrepresentation, the person has a</p> <p>24 loan.</p> <p>25 It's your expectation that a state</p>	<p style="text-align: right;">Page 213 Page</p> <p>1 MR. MERRITT: You have her prior</p> <p>2 answers, but --</p> <p>3 MS. O'GRADY: Okay.</p> <p>4 MR. MERRITT: But if you'd like to</p> <p>5 clarify that answer, you can.</p> <p>6 BY MS. O'GRADY:</p> <p>7 Q When you said one of the reasons it</p> <p>8 might not include a state law statement was that</p> <p>9 it didn't meet the federal standard, what did you</p> <p>10 mean by that?</p> <p>11 A To be applicable, it has to meet, you</p> <p>12 know, the federal definition, meaning it has to be</p> <p>13 a direct loan. It has to be a federal loan. It</p> <p>14 has to be, you know, associated within enrollment,</p> <p>15 and --</p> <p>16 Q Okay. So this threshold --</p> <p>17 A Yeah, threshold.</p> <p>18 Q -- determinations, okay.</p> <p>19 A And there has to be evidence against</p> <p>20 which to make the determination. I mean, I think</p> <p>21 that's implicit.</p> <p>22 Q Right.</p> <p>23 A You know, there has to be evidence to</p> <p>24 evaluate.</p> <p>25 Q So we're in agreement that this denial</p>

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<p>1 letter that Mr. Deegan received is based on that 2 form D template. I think that's --</p> <p>3 A It appears that's --</p> <p>4 Q It appears to be.</p> <p>5 But this one does not include a mention 6 of which state law applies?</p> <p>7 A I would agree.</p> <p>8 Q Would it surprise you to know that 9 thousands of these denial letters that have been 10 sent, none include which state law applies?</p> <p>11 MR. MERRITT: Objection: Speculative.</p> <p>12 MS. O'GRADY: I don't think that's 13 speculative, and I would like to know if the 14 witness would be surprised to learn that.</p> <p>15 MR. MERRITT: She stated her -- that 16 show doesn't have the files before her for each 17 and every application.</p> <p>18 MS. O'GRADY: No, but I'm not asking 19 her to look at each and every application. I want 20 to know if that would be a surprise.</p> <p>21 MR. MERRITT: Go ahead.</p> <p>22 THE WITNESS: It would -- you know, I'd 23 have to know more of the specifics.</p> <p>24 BY MS. O'GRADY:</p> <p>25 Q But again, going back to the template</p>	<p>1 Does this also include the common 2 evidence that Ed would have for certain schools?</p> <p>3 A You know, again that would be something 4 you'd have to ask the BD attorneys. I don't know 5 how they look at evidence, so I -- I can't answer 6 your question.</p> <p>7 Q Okay. You had said that no state law 8 would have to be applied for a borrower who did 9 not submit any evidence for their claim. What 10 denial letter would they get, what form?</p> <p>11 A You know, I -- I -- I don't know off 12 the top of my head. I don't -- I don't know.</p> <p>13 Q Okay. We're going to look at the next 14 exhibit which is file name ECF number 129-1, Connor Declaration, Plaintiffs' Motion to Enforce. (Jones Deposition Exhibit 14 was marked for identification and attached to the transcript.)</p> <p>15 THE WITNESS: All right. Okay. I have 16 it open.</p> <p>17 BY MS. O'GRADY:</p> <p>18 Q Okay. So this is kind of a bulky 19 document and I can -- it is a document that was 20 submitted to the court that includes an affidavit 21 from another one of the named plaintiffs. And</p>
<p>1 of form D, the intention of form D was to tell 2 borrowers what state law applied; right?</p> <p>3 A That was the intent.</p> <p>4 Q And when you wrote in your declaration 5 that you were developing documents so that, quote, 6 borrowers would understand the basis for the 7 decision, part of that basis is which state law 8 would apply; right?</p> <p>9 A If it -- if the state law is at this -- 10 is the subject of the review and the decision, 11 right. If the state law is the source of the 12 determination.</p> <p>13 Q And other sources of determination 14 would be you don't have a loan not meeting those 15 threshold requirements of even being adjudicated; 16 correct?</p> <p>17 A Or you provided no evidence.</p> <p>18 Q Okay. Let's -- on Mr. Deegan's denial, 19 let's go to PDF page 10, and it says there, Why 20 was my application determined to be ineligible.</p> <p>21 And it says, Ed reviewed your borrower 22 defense claims based on any evidence submitted by 23 you in support of your application, your loan data 24 from National Student Loan Data System and 25 evidence provided by other borrowers.</p>	<p>1 like the previous one we just looked at, I'd like 2 to look at her denial letter.</p> <p>3 So if you scroll ahead, it's PDF 4 page 24 that that document begins.</p> <p>5 A Okay.</p> <p>6 MS. O'GRADY: And, for the record, this 7 is Exhibit 15. And the previous Daniel Deegan 8 affidavit that we just looked at is Exhibit 14. (Jones Deposition Exhibit 15 was marked for identification and attached to the transcript.)</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q Okay. It's actually page 27 of the PDF 11 it begins. I apologize. So like Mr. Deegan's 12 that we just looked at, this is Ms. Sweet's 13 borrower defense application. And the personal 14 information is redacted, but nothing besides that.</p> <p>15 A (Witness reviews document.)</p> <p>16 Q And if you can take a -- take a look at 17 the information she provides, she provides 18 narrative information about her experience at 19 Brooks.</p> <p>20 A And, so, I'm recused from -- from any 21 matter -- I have voluntarily recused myself from 22 any matter pertaining to a school that was owned</p>

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1 or operated by Career Education Corporation, so  
2 I'm recused from this one.

3 Q Okay. So how does that affect your --  
4 how does that affect your role more generally?

5 A I don't review -- I don't review -- I  
6 don't make determinations, so --

7 Q Okay. You had a role in reviewing the  
8 borrower defense denial templates we just looked  
9 at, though; correct?

10 A Yeah, the generic template.

11 Q And some of those do go out to students  
12 who attended the ECC schools?

13 A That's not how the recusal process  
14 works. The recusal process at the Department of  
15 Ed is based on particular matters for a particular  
16 institution.

17 Q How long has this voluntary recusal  
18 been in place?

19 A I voluntarily recused myself from the  
20 particular matters with the particular  
21 institutions related to CEC from the day I  
22 returned to the department.

23 Q And is there documentation of the  
24 recusal?

25 A Our -- our ethics -- I'm sure our

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1 with the name of an institution -- and, in fact,  
2 that includes -- you know, I have asked Mark to  
3 mask the names, right, so I don't -- I don't get  
4 statistics that would delineate the CEC schools or  
5 outcomes.

6 Q So he -- he you ask Mark to mask the  
7 names when you receive, you know, like a list of  
8 pending applications so you don't know how many  
9 are from CEC schools?

10 A Correct. He sent -- after he sent the  
11 first one, I sent an email back saying please  
12 don't send me a list with the names of schools.

13 Q So I want to understand how this works.  
14 So he'll redact out all the names of all the  
15 schools, then, or else you'd know that it was CEC;  
16 right?

17 A He's just stopped sending me the list  
18 with the school names.

19 Q So you get a list but no school names,  
20 or you get no list?

21 A I get the roll-up numbers.

22 Q Okay. So how else does this voluntary  
23 recusal affect -- affect your role?

24 MR. MERRITT: Objection. She's  
25 explained the basis of the recusal, and at this

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1 ethics officer would have that. I mean --

2 Q And how -- so how -- how broad is it?

3 I mean, you're recusing yourself from reviewing  
4 this denial letter for a Brooks student.

5 A Right. I would not --

6 Q How else would it affect your job?

7 A I would not make -- I would not issue a  
8 decision on any matter regarding an institution  
9 owned and operated by CEC.

10 Q So can you explain further what that --  
11 what that means operationally for your  
12 policy-making role or any kind of review that you  
13 do of -- of policies that might affect CEC?

14 A That's not how recusals work. Recusals  
15 are not -- I mean, you know, I worked at Princeton  
16 and Community College of Baltimore County. I  
17 don't -- you know, my recusal doesn't mean that I  
18 can't look at any matter that might have an impact  
19 on Ivy League colleges. It's particular.

20 So anything -- so in particular, I  
21 would not look at something about a student who  
22 attended Brooks Institute. I mean, first of all,  
23 I wouldn't look at these anyway because I don't  
24 adjudicate the decisions. I don't review the  
25 decisions. But as a practice, anything that comes

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1 point it's getting beyond the scope of what the  
2 court ordered.

3 BY MS. O'GRADY:

4 Q Well, I want to understand if this  
5 recusal affects in any way your decision to sign  
6 off on -- or decision to sign off or not sign off  
7 on decisions.

8 We talked a lot about the decision not  
9 to send denials. I want to understand the full  
10 scope of it.

11 MR. MERRITT: She's answered the  
12 question.

13 BY MS. O'GRADY:

14 Q Okay. So nothing else to add?

15 A (Witness shakes head.)

16 Q Okay. When you were developing your  
17 partial -- working on developing the partial  
18 relief methodology that went into effect in  
19 December 2019, was that -- did you consider CEC  
20 schools during that, or were you also --

21 A There were no -- there were no data on  
22 CEC schools, no. We looked at the methodology  
23 based on the data available, which at that point  
24 in time was Corinthian and ITT.

25 Q And no -- and no other schools?

<p style="text-align: right;">Page 230 Page</p> <p>1 document title is Article, Trump administration 2 hires McKinsey to evaluate student-loan portfolio. 3 And let's mark this as Exhibit 16. 4 (Jones Deposition Exhibit 16 was marked 5 for identification and attached to the 6 transcript.)</p> <p>7 BY MS. O'GRADY:</p> <p>8 Q And have you seen this article?</p> <p>9 A No.</p> <p>10 Q Are you aware of McKinsey's analysis?</p> <p>11 A Yes.</p> <p>12 Q And is that what you're referring to, 13 discussion about valuation?</p> <p>14 A You know, I -- I think valuation is 15 probably the wrong word. The determination was 16 to, you know, correctly identify the level of risk 17 in the portfolio, so I think -- I think valuation 18 is the wrong term. But the idea is that we need 19 to project what the cost of managing the loan 20 program and what the cost of the loan program with 21 gains are going to be to the taxpayer, and so this 22 was a method to determine either the cost or the 23 source of revenue that the loan portfolio would be 24 to the taxpayer.</p> <p>25 Q And has a conclusion been reached?</p>	<p style="text-align: right;">Page 232 Page</p> <p>1 of the witness to narrow the -- to try to, you 2 know --</p> <p>3 MR. MERRITT: I mean, I'm inclined to 4 say this is all beyond the scope of the -- what's 5 been authorized. I mean, if you think this is 6 going to be a short line of questioning --</p> <p>7 MS. O'GRADY: I can -- I can make it 8 short. Let me -- I'm going to ask --</p> <p>9 BY MS. O'GRADY:</p> <p>10 Q If I can ask you, Ms. Jones, in your 11 policy role at the Department of Ed in evaluating 12 or in determining policy regarding borrower 13 defense, did you consider the valuation of the 14 overall portfolio?</p> <p>15 A No.</p> <p>16 Q And is -- is the likelihood of 17 default -- has that been considered when you've 18 had a policy role regarding borrower defense?</p> <p>19 A Meaning?</p> <p>20 Q The population of borrowers who filed 21 borrower defense claims, their likelihood of 22 default, have you evaluated that in your position?</p> <p>23 A No. I mean, I will say none of them 24 are at risk of default because when they file a 25 claim, they're in forbearance. But, you know,</p>
<p style="text-align: right;">Page 231 Page</p> <p>1 MR. MERRITT: Objection to scope. I'm 2 just going to ask what is the relevance to this 3 line of questioning?</p> <p>4 MS. O'GRADY: I think discussions about 5 the valuation of the loan portfolio go into, you 6 know, the reasons for policy handling borrower 7 defense claims, whether or not there's a concern 8 about the cost of granting those claims and the 9 reasons for delaying decisions.</p> <p>10 MR. MERRITT: I don't think that goes 11 to the extent to which the difficulty of reviewing 12 borrower defense applications actually caused or 13 justified the Secretary's 18-month delay.</p> <p>14 MS. O'GRADY: Well, I think it goes to, 15 you know, the -- the loan portfolio includes 16 claims that are borrower defense claims, so the 17 decision on those borrower defense claims affects 18 the valuation of the portfolio and vice versa. I 19 think those policies are intertwined.</p> <p>20 MR. MERRITT: But that's not a topic 21 the court authorized discovery on.</p> <p>22 MS. O'GRADY: The policy of Brown's 23 cancellation of student debt and cancellation of 24 loans based on borrower defense applications, 25 specifically -- I mean, can I ask a few questions</p>	<p style="text-align: right;">Page 233 Page</p> <p>1 there is no analysis because they can't default 2 while they're in forbearance.</p> <p>3 Q That's true. I suppose I'm asking, 4 though, you know, outside the forbearance granted 5 by having filed a borrower defense application, is 6 the population of borrowers who file borrower 7 defense applications their likelihood of default 8 once they are denied and back in repayment, has 9 that been a consideration that you've taken into 10 account in your role?</p> <p>11 A No.</p> <p>12 MS. O'GRADY: Okay. The next -- the 13 next document is in the folder as Article, DeVos 14 orders partial loan relief. And this I'm going to 15 mark as Exhibit 17 to this deposition.</p> <p>16 (Jones Deposition Exhibit 17 was marked 17 for identification and attached to the 18 transcript.)</p> <p>19 BY MS. O'GRADY:</p> <p>20 Q This is an article from December 6th, 21 2019. And have you seen this article before?</p> <p>22 A Probably.</p> <p>23 Q Okay. Okay. And then in the middle of 24 this second page it says, DeVos in recent weeks 25 directed the Education Department to carry out a</p>

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<p>1        2016 regulations, then they would be -- excuse me,      2        not the 2017 cut-off date, the 2020 cut-off date      3        for the 2019 regulations, they would get put into      4        the examples that you were adding that are fewer      5        than the examples for those under the 2016      6        regulation?</p> <p>7        A        Well, no, the list is -- we've expanded      8        the list for the 2019 regulation.</p> <p>9        Q        So there are more claims available      10      under the 2019 regulation than under the 2016      11      regulation?</p> <p>12      A        There's more information about the      13      claims available.</p> <p>14      Q        Okay. So for 2019, there are fewer      15      claims available but more information about them.      16      And for the 2016, there are more claims available      17      but less information about them?</p> <p>18      A        I don't know anything about the number      19      of claims. I mean, that's to be determined. But      20      the definition of misrepresentation under the 2019      21      reg does not include breach of contract, and the      22      definition of misrepresentation under the 2016      23      rule does include breach of contract.</p> <p>24      What I'm talking about with regard to      25      the tool is giving more examples to borrowers of</p>	<p>1        applicant under the state law standard. I don't      2        know. I don't know how the smart tool works for      3        them.</p> <p>4        Q        So this Web tool, who developed it      5        initially?</p> <p>6        MR. MERRITT: Object on scope. I'm      7        going to ask which topic is this -- all of this      8        relevant to on the Web tool?</p> <p>9        MS. O'GRADY: I would say it's relevant      10      to the reasons for delay because the delay to the      11      extent it's ongoing I think it's appropriate for      12      the reasons for it currently.</p> <p>13      MR. MERRITT: So that's not a topic.      14      The extent to which the difficulty of reviewing      15      borrower defense applications actually caused or      16      justified the 18-month delay that has now ended is      17      what the topic is, so I don't think that's --</p> <p>18      MS. O'GRADY: I think it's relevant to      19      discuss, though, how they're currently being      20      reviewed since this is the -- the evolution of how      21      they were reviewed, the evolution of the denial      22      notices, I would argue it's all part of the same      23      story, or I'm trying to understand if it is, for      24      the reasons behind the developments that occurred      25      after the 18-month delay shed light on the reason</p>
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<p>1        the kinds of things that constitute      2        misrepresentation. They would be covered under      3        the 2016 reg, but the department had not provided      4        those examples in -- in the past to borrowers.</p> <p>5        Q        Okay. So the smart tool, when you put      6        in your -- your date of loan disbursement -- I      7        mean, people -- most people are still going to be      8        under the 2016 regulations; right?</p> <p>9        A        Well, you don't put in your date. You      10      put in your social security number or your FSA ID      11      number and then --</p> <p>12      Q        Okay.</p> <p>13      A        -- NSLDS, which is our loan system,      14      serves it up.</p> <p>15      Q        Thank you. That's helpful.</p> <p>16      So still for most people, it's going to      17      be under the 2016 regulations. Did you add any      18      examples or suggest adding any examples for the      19      2016 regulations?</p> <p>20      A        Yes. Because it's a smart form, this      21      list of examples that I listed would show up for      22      both a borrower applying under 2014 and a borrower      23      applying under 2019.</p> <p>24      Q        Okay.</p> <p>25      A        I don't know what would happen for an</p>	<p>1        for that 18-month delay.</p> <p>2        MR. MERRITT: Well, I guess, like, to      3        the extent the court authorized discovery to the      4        post-18-month delay would be for the development      5        used in the form denial letters which you've      6        discussed. And the extent to which the secretary      7        has denied applications to students, pertaining to      8        school, subject to findings of misconduct, and I'm      9        not seeing how this line of questioning is      10      relevant to any of those topics.</p> <p>11      MS. O'GRADY: I think part of it,      12      though, is about systems generally so some of the      13      delay and some of the reasons given for the delay      14      in the past had been the need to develop systems.      15      My understanding is this computer program is one      16      of those systems.</p> <p>17      So I can ask -- I can ask more      18      questions about the past development of this      19      computer system and -- and when it began. I'm      20      happy to go there. I was going to get there. And      21      I think that falls squarely within the reasons --</p> <p>22      MR. MERRITT: I mean I disagree that      23      the development of systems is something the court      24      authorized discovery into. You know, we've gone      25      into this a little bit. I think at some point</p>

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<p>1 Q Okay. So at some point, you signed off 2 on this text or something very similar to it?</p> <p>3 A Yeah. I can't remember if it listed 4 those three points, but -- but, yeah, I mean, 5 there was instructions for reconsideration.</p> <p>6 Q Okay. And when you were reviewing the 7 form denial letters, did you think about or 8 consider whether or not they would provide enough 9 information for a borrower to seek 10 reconsideration?</p> <p>11 MR. MERRITT: Objection: calling for 12 privileged information.</p> <p>13 MS. O'GRADY: Do you mean deliberative 14 process privilege?</p> <p>15 MR. MERRITT: I mean you're asking her 16 what she thought, you know, about the review of 17 the letters before they were final.</p> <p>18 BY MS. O'GRADY:</p> <p>19 Q On this final letter, do you believe 20 there's enough information for a borrower to 21 request reconsideration?</p> <p>22 A I believe that there is -- yeah, I 23 believe there is enough information about a 24 borrower that they can request and how they would 25 go about it, like address it in an email or, you</p>	<p>1 Q I'm looking at this particular 2 document. So what information in this document 3 could a borrower point to to say, Ed, you got it 4 wrong, because?</p> <p>5 A I mean, I think they would explain why 6 they think we got it wrong.</p> <p>7 Q And what specifically -- how would that 8 explanation be different than their initial 9 application? You know, what -- what other -- 10 what -- why do you believe that Ed incorrectly 11 decided your borrower defense to repayment 12 application?</p> <p>13 A I mean, you know, again, I think a 14 borrower would give an explanation, and the -- the 15 one that I'm aware of is, you know, borrowers who 16 wrote in and said, you know, you assigned relief 17 because you said I was in this program but, you 18 know, the college called it this other program, 19 and -- and -- and that's different on the table.</p> <p>20 Q So the one example you can think of is 21 a -- is, again, a problem with the -- again, 22 properly identifying what program or what school 23 somebody went to.</p> <p>24 If a borrower has included information 25 about a number of allegations and then this denial</p>
<p>1 know --</p> <p>2 Q Yes. In terms of logistics, the email 3 address is there and the fact of the 4 reconsideration process has been described?</p> <p>5 A Yes.</p> <p>6 Q In terms of the substance in point two, 7 Why you believe that Ed incorrectly decided your 8 borrower defense to repayment application, what 9 information in this denial letter could a borrower 10 use to answer that question?</p> <p>11 A And that's the part of this that I -- I 12 don't have the expertise. I -- you know, those 13 particular questions were developed by the BD 14 unit.</p> <p>15 Q Let me ask it a different way. So if 16 you could put yourself in the shoes of the 17 borrower because the borrower is -- I can tell you 18 this borrower and probably most borrowers are not 19 themselves lawyers either. How do they determine 20 what information to include to answer the 21 question, Why you believe that Ed incorrectly 22 decided your borrower defense to repayment 23 application?</p> <p>24 MR. MERRITT: Objection: speculative.</p> <p>25 BY MS. O'GRADY:</p>	<p>1 letter, for example, if we just scroll up to 2 page 10 of the PDF, Allegation one, employment 3 prospects: You allege that Keller Graduate School 4 of Management engaged in misconduct related to 5 employment prospects. This allegation fails for 6 the following reasons: Insufficient evidence. 7 Your claim for relief on this basis is 8 therefore denied.</p> <p>9 What basis -- how would a borrower 10 interpret that paragraph? I mean, I think you put 11 yourself -- well, that's my question.</p> <p>12 How should a borrower interpret that 13 paragraph?</p> <p>14 A Because I don't know what the borrower 15 submitted originally, I -- I don't know. I don't 16 know what was in the borrower's original 17 application.</p> <p>18 Q When you signed off on the initial form 19 denial letters, I think at one point you had said 20 this is the spot, you know, for the following 21 reasons, and that's where you had expected there 22 to be information about the state law standard 23 applied.</p> <p>24 That's right? You testified about that 25 earlier today; correct?</p>

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<p>1        A     I said that when -- yes, in the section      2 where the attorneys explain -- I can't remember      3 the words, but, right, that little bracketed place      4 that you would be evaluating evidence based on the      5 state standard.</p> <p>6        Q     And here the only words in that      7 bracketed place, which I think was recommendation      8 reason, is the -- are the words "insufficient      9 evidence."</p> <p>10      Is that -- when you first looked at the      11 template, is -- you know what, let me just take a      12 moment. Let's look at the template. My question      13 is about the template.</p> <p>14      So we're going to go to Exhibit      15 Number 13 of this deposition, and the file is ECF      16 number 116, Defendants Post-CMC Filing.</p> <p>17      And this, as you'll recall, have the      18 attachment of these form letters. Let's go all      19 the way down --</p> <p>20     A     I'm still looking for it.</p> <p>21     Q     Oh, sure. Sorry about that.</p> <p>22     A     (Witness reviews document.)</p> <p>23     Okay. I -- I have it. Which form do      24 you want me to look at?</p> <p>25     Q     Okay. So I want to go all the way to</p>	<p>1        MR. MERRITT: Well, it's still going to      2 what her thoughts and impressions were at the time      3 which is deliberative information, what you're      4 asking her now.</p> <p>5        BY MS. O'GRADY:</p> <p>6        Q     Did you discuss -- when these were      7 finalized, did you discuss what review      8 recommendation reason meant?</p> <p>9        MR. MERRITT: You can answer that.</p> <p>10      THE WITNESS: I -- I -- I don't -- I      11 don't know what date they were considered to be      12 finalized, but, yes, I was engaged in      13 conversations about what I believed that meant.</p> <p>14      BY MS. O'GRADY:</p> <p>15      Q     And I'm not asking about the      16 deliberation of the different drafts. I'm asking      17 what your understanding of this template means      18 right here? What is the review recommendation      19 reason?</p> <p>20      A     I had to defer to the expertise of the      21 lawyers. I -- I -- I don't write legal text, so,      22 you know, the expectation was that lawyers would      23 make a decision and that information would be      24 provided.</p> <p>25      Q     But in your declaration -- we can go</p>
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<p>1        PDF page 23, and this is the form D denial      2 template.</p> <p>3        A     Okay.</p> <p>4        Q     And there in the highlighted -- it's      5 the highlighted text is what a reviewing attorney      6 would insert; correct?</p> <p>7        A     It -- it would -- it would be what they      8 would enter into their work papers.</p> <p>9        Q     Okay. And we discussed before how your      10 expectation was that the highlighted text of      11 review recommendation reason would include the      12 state law standard.</p> <p>13      And my question now is did you expect      14 any other information to be within those brackets      15 review recommendation reason?</p> <p>16      <b>What other information did you think</b>      17 <b>when you reviewed this template would be included</b>      18 <b>there?</b></p> <p>19      MR. MERRITT: Objection. It's calling      20 for privileged and deliberative information.</p> <p>21      MS. O'GRADY: Well, I think the witness      22 has already testified about her expectation that      23 the state law standard would be included here, and      24 I want to know her -- when she signed off on the      25 form D template what she was signing off on.</p>	<p>1        back to Exhibit 2 of your declaration which is      2 your declaration, I should say. We'll go back      3 to -- it's PDF page 10 of Exhibit 2, the bottom of      4 paragraph 26. And you write here, The department      5 has been working to develop documents to provide a      6 more robust explanation for borrowers whose claims      7 are denied.</p> <p>8        Is this template the result of that      9 effort to develop documents to provide a more      10 robust explanation?</p> <p>11      A     The development of these templates is      12 what I was referring to when I said that the      13 department was developing documents.</p> <p>14      Q     Did you ever, before today, review a      15 form D denial notice as it was provided to a      16 borrower?</p> <p>17      A     No. The servicers send those.</p> <p>18      Q     So you've seen the template, but you      19 have never before today seen what it looked like      20 to a borrower receiving it?</p> <p>21      A     I -- I believe that there was one      22 letter that I saw that came in. When I asked Mark      23 about it, he told me that the letter that I saw      24 was not a typical letter. So I've only seen --</p> <p>25      Q     Which letter was that? Do you recall?</p>